

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Gerberding
Application No.:	10/026413
Filed:	December 21, 2001
Patent No.:	7537607
Issue Date:	May 19, 2009
For:	Stent Geometry for Improved Flexibility
Examiner:	David. C. Comstock
Group Art Unit:	3733

Mail Stop _____
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Docket No.: S63.2B-10234-US01

Application for Patent Term Adjustment, 37 CFR 1.705

The patentee hereby requests reconsideration, under 35 USC 154(d), of the Determination of Patent Term Adjustment made by the Director as indicated on the Issue Notification and on the face of US 7537607, issued 05/26/2009, copies of which are attached hereto.

As indicated on the face of the patent and on the Issue Notification, the adjustment to patent term is 1315 days. Also attached is the PAIR record showing the basis for this determination. This determination is incorrect.

The above referenced application was filed on December 21, 2001 and so is entitled to the benefit of the current version of 35 U.S.C. 154. The determination fails to follow the calculation method required by law as determined in *Wyeth v. Dudas*, 88 USPQ2d 1538 (D.D.C. 2008), currently on appeal to the Federal Circuit, which is controlling law for the issues presented herein.

This Application constitutes a request that the patent term adjustment be made in accordance with the determination method described in the *Wyeth* case. Applicant also requests that the decision on this petition be held in abeyance pending final adjudication of the *Wyeth* case.

- (1) This request is accompanied by the fee set forth in §37 CFR 1.18(e).
- (2) This request is timely filed as it is being filed on 7/24/2009. The patent issued 5/26/2009. Thus, this request is being filed prior to the two month date for petitioning the commissioner, namely 7/26/2009. Furthermore, this request could not have been filed prior to the issuance of the patent as the "three year" delay days could not have been determined until the issuance date. To that end, Petitioner notes that a petition filed by this law firm prior to the issue date, in application 10/037036, was held in abeyance pending issuance of the patent in a decision in which the Office stated:

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

and further:

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

- (3) Statement of the facts involved:
 - (i) The correct patent term adjustment and the basis under 37 CFR § 1.702 for the adjustment is as follows:

USPTO delay days to the issuance of the first Office Action as indicated on PAIR	508
Applicant delay days as indicated on PAIR	-302
Non-overlapping three year days	+1617
Correct Adjustment	1823

- (ii) The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are explained as follows:

The Office calculation of 1315 days fails to properly include all of the USPTO delay days. As *Wyeth* establishes, this is improper. No time was consumed by an interference proceeding under 35 U.S.C. 135(a); no time was consumed by the imposition of a secrecy order under 35 U.S.C. 181; by review by the Board of Patent Appeals and Interferences or a Federal court; no RCEs were filed. Applicant is entitled to an additional adjustment to the patent term based on the delay prior to the beginning of the three year date (12/21/2004) and the delay beyond 14 months.

From and including 12/21/2001 through 05/06/2009, the date of issuance, the number of three years days was **1617** days. Subtracting Applicant's delay of **302** days as indicated on PAIR leaves a balance of **1315** days. In addition, the PTO delayed **508** days in mailing a notification or notice, pursuant to 37 CFR 1.702(a)(1), which balance should be added to the **1315** days calculated for the adjustment as of the date of the Determination. Thus the total adjustment that should have been shown on the face of the patent 35 USC 154 (b) is **1823** days.

- (iii) The patent is not subject to a terminal disclaimer.

- (iv) (A) Applicant has included herewith a copy of the print-out from the USPTO's PAIR Patent Term Adjustment page for the above file in which the USPTO has set forth adjustments made for applicant's delay. Applicant has not verified the USPTO's determination but accepts it for the purposes of this petition. The circumstances for each downward adjustment may be found on that page.

All items required under 37 CFR 1.705 having been provided herein, the applicant requests that the Patent Term Adjustment be corrected to show an adjustment of **1823** days.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: July 24, 2009

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APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026413	03/26/2009	7537867	S63.2-10234-US01	7564

490 7596 05/06/2009
VIDAS, ARKETT & STEINKRAUS, P.A.
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ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment is 1315 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

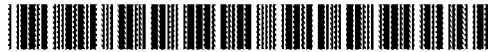
If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (571)-272-4200.

APPLICANT(s) (Please see PAIR WEB site <http://pair.uspto.gov> for additional applicants):

Brent C. Gerberding, Alameda, CA;



US007537607B2

(12) **United States Patent**
Gerberding

(10) **Patent No.:** **US 7,537,607 B2**
(45) **Date of Patent:** **May 26, 2009**

(54) **STENT GEOMETRY FOR IMPROVED FLEXIBILITY**

6,416,538 B1 7/2002 Ley et al.

(75) **Inventor:** **Brent C. Gerberding**, Alameda, CA (US)

(Continued)

(73) **Assignee:** **Boston Scientific Scimed, Inc.**, Maple Grove, MN (US)

FOREIGN PATENT DOCUMENTS

EP 0 806 190 A1 11/1997

(*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1315 days.

(Continued)

(21) **Appl. No.:** **10/026,413**

OTHER PUBLICATIONS

(22) **Filed:** **Dec. 21, 2001**

U.S. Appl. No. 60/238,178, filed Oct. 5, 2000, DiCaprio et al.

(65) **Prior Publication Data**

(Continued)

US 2003/0120334 A1 Jun. 26, 2003

Primary Examiner—Eduardo C Robert
Assistant Examiner—David Comstock

(51) **Int. Cl.**
A61F 2/06 (2006.01)

(74) *Attorney, Agent, or Firm*—Vidas, Arrett & Steinkraus, P.A.

(52) **U.S. Cl.** **623/1.15**

(58) **Field of Classification Search** 623/1.15, 623/1.16, 1.18, 1.19, 1.2, 1.4; 606/191, 194
See application file for complete search history.

(57) **ABSTRACT**

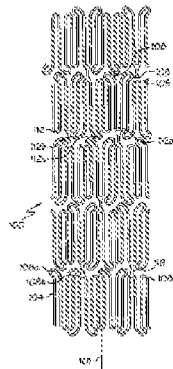
(56) **References Cited**

U.S. PATENT DOCUMENTS

5,091,205 A 2/1992 Fan 427/2
5,725,548 A * 3/1998 Jayaraman 623/1.15
5,755,770 A 5/1998 Ravenscroft 623/1
5,824,046 A 10/1998 Smith et al. 623/1
5,935,162 A * 8/1999 Dang 623/1.15
5,957,930 A 9/1999 Vrba 606/108
6,013,091 A 1/2000 Ley et al.
6,117,165 A 9/2000 Becker
6,120,522 A 9/2000 Vrba et al. 606/190
6,123,712 A 9/2000 DiCaprio et al. 606/108
6,231,599 B1 5/2001 Ley
6,280,457 B1 8/2001 Wallace et al. 606/209
6,395,020 B1 5/2002 Ley et al.

A stent comprises one or more circumferential serpentine bands and having alternating peak portions and trough portions. The peak portions include shorter peak portions and longer peak portions. The longer peak portions are of a longitudinal extent greater than the shorter peak portions. The longer peak portions include first bent peak portions which extend in a first direction non-parallel to the longitudinal axis of the stent and second bent peak portions which extend in a second direction non-parallel to the longitudinal axis of the stent. Each first bent peak portion is circumferentially adjacent to one second bent peak portion which points toward the first bent peak portion and to one second bent peak portion which points away from the first bent peak portion. Adjacent first and second bent peak portions which point toward one another are separated one from the other by at least one shorter peak portion.

21 Claims, 4 Drawing Sheets



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10/026,413

STENT GEOMETRY FOR IMPROVED FLEXIBILITY



Select New Case	Application Data	Transaction History	Image File Wrapper	Patent Term Adjustments	Continuity Data	Fees	Published Documents	Address & Attorney/Agent
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Patent Term Adjustment

Filing or 371(c) Date:	12-21-2001	USPTO Delay (PTO) Delay (days):	1617
Issue Date of Patent:	05-26-2009	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	302
Post-Issue Petitions (days):	+0	Total Patent Term Adjustment (days):	1315
USPTO Adjustment (days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
05-06-2009	PTA 36 Months	542	
05-26-2009	Patent Issue Date Used in PTA Calculation		
04-22-2009	Dispatch to FDC		
04-21-2009	Application Is Considered Ready for Issue		
04-20-2009	Issue Fee Payment Verified		
04-20-2009	Issue Fee Payment Received		
03-24-2009	Mail Notice of Allowance		
03-20-2009	Notice of Allowance Data Verification Completed		
03-20-2009	Document Verification		
02-24-2009	Date Forwarded to Examiner		
02-17-2009	Amendment after Final Rejection		
12-24-2008	Mail Final Rejection (PTOL - 326)	319	
12-22-2008	Final Rejection		
09-30-2008	Case Docketed to Examiner in GAU		
12-08-2007	Case Docketed to Examiner in GAU		
10-16-2007	Date Forwarded to Examiner		
10-09-2007	Response after Non-Final Action		
07-09-2007	Mail Non-Final Rejection		
07-03-2007	Case Docketed to Examiner in GAU		
06-25-2007	Non-Final Rejection		
04-17-2007	Date Forwarded to Examiner		
04-16-2007	Response after Non-Final Action		
01-30-2007	Mail Non-Final Rejection		
01-22-2007	Non-Final Rejection		
03-31-2006	Information Disclosure Statement considered		
11-18-2006	Date Forwarded to Examiner		
11-09-2006	Response after Non-Final Action		
11-02-2006	Mail Miscellaneous Communication to Applicant	248	
10-30-2006	Miscellaneous Action with SSP		
08-17-2006	Date Forwarded to Examiner		
10-27-2005	Response after Non-Final Action		86
03-07-2006	Miscellaneous Incoming Letter		
07-21-2006	Case Docketed to Examiner in GAU		
03-31-2006	Reference capture on IDS		
03-31-2006	Information Disclosure Statement (IDS) Filed		155
03-31-2006	Information Disclosure Statement (IDS) Filed		
10-27-2005	Miscellaneous Incoming Letter		

10-19-2005	Mail Notice of Informal or Non-Responsive Amendment	
10-06-2005	Case Docketed to Examiner in GAU	
08-02-2005	Reference capture on IDS	
08-02-2005	Information Disclosure Statement (IDS) Filed	
08-02-2005	Information Disclosure Statement (IDS) Filed	
08-10-2005	Date Forwarded to Examiner	
08-02-2005	Informal or Non-Responsive Amendment after Examiner Action	
08-02-2005	Response after Non-Final Action	51
08-02-2005	Request for Extension of Time - Granted	*
03-02-2005	Mail Supplemental Non-Final Action	*
02-22-2005	Supplemental Non-Final Action	
12-03-2004	Mail Non-Final Rejection	
11-24-2004	Non-Final Rejection	
09-20-2004	IFW TSS Processing by Tech Center Complete	
09-20-2004	Date Forwarded to Examiner	
08-11-2004	Response to Election / Restriction Filed	
07-02-2002	Reference capture on IDS	
06-25-2002	Reference capture on IDS	
08-11-2004	Workflow incoming amendment IFW	
07-13-2004	Mail Restriction Requirement	508
07-12-2004	Requirement for Restriction / Election	*
12-04-2003	Case Docketed to Examiner in GAU	*
02-05-2003	Information Disclosure Statement (IDS) Filed	*
02-05-2003	Information Disclosure Statement (IDS) Filed	*
11-04-2002	New or Additional Drawing Filed	*
07-02-2002	Information Disclosure Statement (IDS) Filed	*
07-02-2002	Information Disclosure Statement (IDS) Filed	*
03-25-2002	Information Disclosure Statement (IDS) Filed	*
03-25-2002	Information Disclosure Statement (IDS) Filed	*
03-05-2002	Case Docketed to Examiner in GAU	*
02-08-2002	Application Dispatched from OIPE	*
02-06-2002	Application Is Now Complete	*
01-29-2002	IFW Scan & PACR Auto Security Review	*
01-11-2002	IFW Scan & PACR Auto Security Review	*
12-21-2001	Initial Exam Team nn	*
